



FTR Now

Ontario Proposes Significant Amendments to Employment and Labour Laws

Date: May 30, 2017

Today, one week after making public the Final Report from the Changing Workplaces Review, the Ontario government announced details of its intended legislative response. While that response incorporates some of the recommendations of the Special Advisors, it also includes proposals that were not addressed in the Final Report or, in some cases, the Interim Report. It also introduces changes that were outside the mandate of the Special Advisors. If implemented as announced, the proposed amendments to the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995* will significantly impact your business, and all employers need to be aware of what the government is proposing to enact.

The Fair Workplaces, Better Jobs Action Plan

On May 30, 2017, the Ontario government announced a package of legislative measures it intends to introduce in response to the Final Report from the Changing Workplaces Review (Final Report). The changes will be introduced through new legislation – the *Fair Workplaces, Better Jobs Act, 2017* – which is anticipated to be introduced later this week before the Legislature rises for the summer.

The proposed new legislation will implement significant amendments to Ontario's *Employment Standards Act, 2000* (ESA) and *Labour Relations Act, 1995* (LRA), and will address a broad range of issues, including increased minimum wage and vacation entitlements, new paid sick leave entitlements, equal pay for various employee groups and new personal emergency leave rules. Rules relating to certification and successor rights are among the changes to be made to the LRA. More complete details can be found in the [government's Backgrounder](#).

Changes to the ESA

There are a range of changes that will be made to the ESA, some of which we highlight in the next few sections.

Increased Minimum Wage

Notwithstanding that minimum wage issues were outside the scope of the Changing Workplaces Review, the government is proposing to significantly increase the general minimum wage to:

- \$14.00 per hour on January 1, 2018; and
- \$15.00 per hour on January 1, 2019.

The government does not intend to eliminate any of the special minimum wage rates, but they will be increased by the same percentage applied to the general minimum wage.

Equal pay for part-time, casual, temporary and seasonal employees

The proposed new legislation would adopt the Final Report's recommendation to implement a general rule that no employee should be paid less than what is paid to full-time employees of the same employer who perform the same job. This rule would apply to part-time, casual, temporary and seasonal employees, unless there are objective reasons to justify a differential wage rate, including systems that are based on seniority, merit or where earnings are measured by quantity or quality of production.

Employees would have a right to request a review of their wages, and employers would be required to respond by either increasing the wage rate or providing a written explanation of the differential. There would be anti-reprisal protections for such requests.

These rules would come into effect on April 1, 2018.

Scheduling

The proposed new legislation would implement a range of measures designed to bring some certainty to the scheduling of work. Some, though not all, of these measures were recommended in the Final Report:

- A new employee right to request schedule or work location changes without reprisal.
- Amending the 3-hour reporting rule to require payment at the regular rate of pay.
- An employee right to refuse a shift without reprisal if there is less than 4 days' notice provided.
- An obligation to provide 3 hours' pay at the regular rate if a shift is cancelled within 48 hours of its scheduled start.
- A new minimum "on call" payment – 3 hours' pay at the regular rate – if an employee is placed on call and not called into work. This applies to each day of "on call" status.

There would be some leeway for collective agreements to override the new rules. These provisions would come into effect on January 1, 2019.

Vacation and Public Holidays

As recommended in the Final Report, vacation entitlement would increase to 3 weeks' vacation time and 6% vacation pay after 5 years of service with an employer.

The government would also be amending the formula to calculate public holiday pay to clarify that employees are entitled to their "average daily wage" and to simplify other aspects of this entitlement. Details were not announced.

Both of these sets of changes would come into effect on January 1, 2018.

Personal Emergency Leave

There are some significant changes being made to personal emergency leave. Notably, the government did not adopt the recommendation of the Special Advisors to restructure the entitlement to 7 personal emergency leave days, but to carve out a separate bereavement leave entitlement. Rather, the proposed new legislation would make the following changes:

- maintain the 10-day entitlement, but require that 2 of the days be paid leave
- eliminate the 50-employee threshold so that personal emergency leave will apply in all workplaces

- expand coverage to include domestic or sexual violence or the threat of such violence
- prohibit employers from requesting a sick note from an employee taking a personal emergency leave day.

This last change will significantly limit an employer's ability to ensure that personal emergency leave is taken for appropriate reasons and to manage employee attendance.

These changes would take effect on January 1, 2018.

Other Leaves of Absence

As anticipated from the Final Report, the government plans to increase the length of Family Medical Leave from 8 weeks in a 26-week period to 27 weeks in a 52-week period, and to create a new leave applying to the death of any child.

These changes would also take effect on January 1, 2018.

Temporary Help Agency Employees

There are several changes related to the use of assignment employees by temporary help agencies, both in respect of the ESA and the LRA (see below). First, the government would apply "equal pay for equal work" principles, requiring assignment employees to be paid equally to employees of the agency's client who perform the same job. There is no indication if the new legislation will include a 6-month delay as recommended in the Final Report. Second, the government would require at least one week's notice of termination of an assignment (or payment of one week's wages where notice is not provided).

The first of these changes would take effect on April 1, 2018, and the second on January 1, 2018.

Application of the ESA

The government has decided that it will not add "dependent contractors" to the definition of "employee" under the ESA. It will, however, amend the ESA to prohibit the misclassification of employees as "independent contractors", and will increase penalties for violations of the prohibition.

It appears that the government will eliminate most of the exclusions that apply to Crown employees, and will make the ESA applicable to trainees. However, individuals working through an experiential learning program run through a university, college or high school would continue to be excluded. Beginning in January 1, 2019, the 3-hour reporting rule would apply to student employees as well.

Acting on a key recommendation of the Special Advisors, the government has committed to conducting a review of all ESA exemptions and special industry rules, beginning this Fall. This review will include a review of the managerial and supervisory exemption from hours of work and overtime pay.

Miscellaneous

There are a range of other changes being proposed, including:

- clarification and expansion of the related employer provision of the ESA
- allowing for the use of electronic agreements
- increased penalties for non-compliance (primarily through increased amounts for notices of contravention and authority to publish more data on individuals found to be in contravention)
- improved wage collection.

The government has also pledged to hire an additional 175 employment standards officers to enforce the ESA, and will launch a new education program aimed at both employees and small to medium-sized businesses.

Changes to the LRA

The proposed new legislation would also enact changes to the LRA, and focuses on a range of matters including certification, successor rights and bargaining unit organization. All of the LRA changes would come into effect 6 months after the new legislation comes into force. Some highlights include the following proposals.

Union Certification

The government is proposing to introduce card-based certification for employees in the following three areas:

- temporary help agency industry
- building services sector
- home care and community services industry.

There were no details on how card-based certification would apply within these diverse sectors, and we will monitor the actual legislation for further guidance.

The government is also proposing a number of changes to the certification process more generally, many of which were recommended in the Final Report. This includes unspecified changes to make it easier for the Ontario Labour Relations Board (OLRB) to order remedial certification if an employer contravenes the LRA during a certification drive, and increasing access to first contract arbitration (including a new “intensive mediation” process).

As also recommended in the Final Report, the proposed new legislation would require employers to provide unions with employee lists and contact information if they can demonstrate 20% support of the employees being certified, and will allow the OLRB to conduct votes outside a workplace, including allowing electronic and telephone voting.

Successor Rights

The proposed new legislation would extend successor rights to the retendering of building services contracts, and would permit the government to designate similar rules for other publicly-funded contracted services.

Structure of Bargaining Units

The proposed new legislation would give the OLRB authority to restructure existing bargaining units within an employer’s operations where the existing units are no longer appropriate for collective bargaining. Similarly, the OLRB would have the authority to consolidate new bargaining units with existing units at the same employer (where represented by the same bargaining agent).

Miscellaneous

The proposed new legislation would make other changes as well. For example, it would eliminate the 6-month limitation on an employee’s right to return to work during a lawful strike, and would require reinstatement of employees at the conclusion of a legal strike or lockout (subject to various conditions). Just cause protection would be extended to periods of time where no collective agreement is in operation (following certification and following the parties being in a legal strike/lockout position).

Fines would be increased under the LRA to \$5,000 for individuals and \$100,000 for organizations. The government is committed to reviewing the LRA’s existing exclusions.



Conclusion

As readers can appreciate from this review, the *Fair Workplaces, Better Jobs Act, 2017*, if introduced and enacted, would make significant changes to both the ESA and LRA, and would have a major impact on your operations. Based on the comments of both Premier Wynne and Minister Flynn at today's press conference, it appears that the government is planning to introduce the new legislation as a Bill in the Legislature later this week. It also appears that the government will seek to have the Bill referred immediately to a Committee so that public hearings may occur over the summer, and any debate and amendments could be made in the Fall when the Legislature resumes. This procedure is likely to require all-party agreement in the Legislature, so it is not clear at this time if it will occur.

We remind our readers that there were many other recommendations in the Final Report that did not make it into the new legislation proposed today, and that the government may yet consider more of the recommendations at a future date. We will continue to monitor the progress of the proposed new legislation and will report as new developments occur.

Should you have any questions or require further information, please contact [your regular Hicks Morley lawyer](#).

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